

## UPDATED INFORMATIVE DIGEST

The Residential Care Facilities for the Elderly (RCFE) Act in existing law provides for the licensure and regulation of RCFEs. RCFEs are regarded by statute as a housing arrangement chosen voluntarily by people who are 60 years of age or over or their authorized representatives where varying levels and intensities of care and supervision, protective supervision, or personal care are provided based on the varying needs of a person pursuant to Section 1569.2 of the Health and Safety Code. Also pursuant to this statute, care in RCFEs may be provided to persons who are under 60 years of age with compatible needs as specified in Section 1569.316 of the Health and Safety Code.

Previous existing law has not enacted personal rights for residents in RCFEs. Assembly Bill (AB) 2171 (Chapter 702, Statutes of 2014) became effective January 1, 2015 and:

- 1) Enacted a "bill of rights" for residents in privately operated RCFEs in a new Article 2.5 in the Residential Care Facilities for the Elderly Act.
- 2) Required licensees to post, in a prominent location, a copy of the bill of rights in English and, if residents in a facility read in another language, in any other language in which five (5) percent or more of the residents can only read that other language.

Senate Bill (SB) 219 (Chapter 483, Statutes of 2017) became effective January 1, 2018 and:

- 1) Enacted a "bill of rights" to address the needs of residents who are lesbian, gay, bisexual, and transgender (LGBT) in RCFEs, in Health and Safety Code section 1439.50, et seq. for long-term care facilities, and applied the bill of rights to RCFEs as specified in Health and Safety Code section 1569.318.
- 2) Required licensees to post a nondiscrimination notice alongside a facility's current nondiscrimination policy in all places and on all materials where the policy is posted.

SB 895 (Chapter 704, Statutes of 2014) became effective January 1, 2015 and required the Department to design, or cause to be designed, a poster that contains information on the appropriate reporting agency in case of a complaint or emergency for posting in RCFEs.

Existing regulations in the California Code of Regulations (CCR), Title 22, Division 6, Chapter 8, RCFE Section 87468 established that each resident in RCFEs have 18 personal rights, which include such concepts as the right to be accorded dignity in his or her personal relationships with staff, residents, and other persons and the right to be informed by the licensee of provisions of law regarding complaints and of procedures to confidentially register complaints, including, but not limited to, the address and telephone number of the complaint receiving unit of the licensing agency. These regulations also established the requirement that licensees inform residents of their personal rights.

These proposed regulations amend the CCR, Title 22, Section 87468 to maintain it as a lead section to address general requirements in regard to personal rights of residents in all RCFEs. They also require that: 1) residents in privately and publicly operated RCFEs continue to be afforded personal rights based on existing regulations; 2) residents in privately operated RCFEs be afforded additional personal rights based on statute; 3) residents in all RCFEs be afforded personal rights to address the needs of residents who are LGBT; 4) regardless of number of residents, all licensees provide residents and their representatives with written copies of personal rights and post personal rights, nondiscrimination notice, and complaint information; 5) In RCFEs where residents read in another language, personal rights, nondiscrimination notice, and complaint information also be posted in any other language in which five (5) percent or more of the residents can only read that other language; 6) all licensees keep an accurate and confidential list of all residents and languages read by residents and provide this list to the Department upon request; and 7) all licensees include information that is specific to a resident's gender identity in resident records.

These proposed regulations also make miscellaneous changes to regulations that do not address resident personal rights. One of these changes is needed to amend the timeframe for notice of sale of a RCFE as a result of changes to Health and Safety Code section 1569.191, which reduced the timeframe for this notice from 60 days to 30 days, pursuant to AB 878 (Chapter 526, Statutes of 1993). Other changes are needed to clarify requirements for medication storage, repeal an incorrect subsection reference in regulations, and adopt unstageable pressure injuries as a prohibited health condition.

This regulatory action will benefit residents receiving care in privately operated RCFEs by according them statutory personal rights that are consistent with the patient bill of rights implemented by the California Advocates for Nursing Home Reform, California Department of Public Health, and Medicare. Residents in both privately operated and publicly operated RCFEs will continue to have the protection of personal rights. This action will also further address the needs of residents who are LGBT. It will also ensure that residents, including those who read in other languages, in all RCFEs have equal access to and awareness of personal rights, nondiscrimination notice, and complaint information. In addition, this action will assist all licensees in ensuring compliance in providing care to residents.

The Department finds that these proposed regulations are compatible and consistent with the intent of the Legislature in adopting AB 2171, AB 878 (Chapter 526, Statutes of 1993), SB 219, and SB 895 and with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that, other than mentioned above, these are the only regulations that concern personal rights and complaints for Residential Care Facilities for the Elderly in California.

***Form Incorporated by Reference***

Residential Care Facility for the Elderly (RCFE) Complaint Poster (PUB 475, 1/15)

### ***Public Process History***

A brief timeline for this regulations action is:

- On June 10, 2016, CDSS initially noticed these regulations to the public for a 45-day comment period in the Office of Administrative Law (OAL) California Regulatory Notice Register, Register 2016, No. 24-Z, dated June 10, 2016. These regulations were considered as Item #1 at a public hearing held on July 27, 2016, in Sacramento, California.
- On July 14, 2017, CDSS noticed these regulations to the public a second time for a 45-day comment period in the OAL California Regulatory Notice Register, Register 2017, No. 28-Z, dated July 14, 2017. These regulations were considered as Item #1 at a public hearing held on August 30, 2017, in Sacramento, California.
- On March 12, 2018, CDSS noticed these regulations to the interested public per Government Code section 11347.1(b) for a 15-day comment period via a 15-Day Renotice Letter, dated March 12, 2018.
- On May 17, 2018, CDSS noticed these regulations to the interested public per Government Code section 11347.1(b) for a second 15-day comment period via a 15-Day Renotice Letter, dated May 17, 2018.

The full public process history, including documents, of this regulations action may be found on line at: <http://www.cdss.ca.gov/inforesources/Pre-Hearing-Regulations/ORD-No-1115-13>.